IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12121 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ILIAZKHAN MUSSAKHAN - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SN SHELAT WITH MRS V.D NANAVATI for Petitioner(s) : 1,
MR LR PUJARI AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/12/2006

ORAL JUDGMENT

1. Mr.S.N. Shelat, learned senior counsel with Mrs.V.D.Nanavati, for the petitioner and Mr.L.R. Pujari, learned A.G.P. for respondents – State.

2. Heard.

3. Short facts necessary for disposal of the present writ application are that the petitioner Ilyaskhan Musakhan, resident of village Chharwada, Tal.Pardi, District Valsad, was holding certain agricultural lands as under;

Sr.No.	Name of the village	A/c No.	Area (Acre-Guntha)
1.	Chharwada	5	41.34
2.	Dungara	42	30.02
3.	Vapi	988	3.29
		Total	75.25

4. The Mamlatdar-cum-Agricultural Lands Tribunal, exercising its powers as Competent Authority under the Gujarat Agricultural Lands Ceiling Act, 1960 held that the entire land be treated to be superior dry crop land / rice land and after taking into consideration the nature and class of the land as provided under Chapter-1 read with sec.5 of the Act, held that the total land admeasuring 75 Acres and 25 Gunthas will have to be taken as 116 Acres and 71 Gunthas. After doing so, he held petitioner's entitlement to 39 Acres only and observed that the rest of the land being surplus would vest in the Government. Being aggrieved by the said order dtd.28/2/1986 in

Ceiling Case No.1 of 85 passed by Mamlatdar-cum-A.L.T., Pardi, the petitioner filed Ceiling Appeal No.286 of 1986. The same was heard and disposed of by the Dy.Collector (Appeal), Valsad on 6/1/1988. It was held by the Dy.Collector that the petitioner and his mother each would be entitled to 1 unit and all the lands could not be converted into superior dry crop land. He accordingly held that surplus land would be 18 Acres and 22 Gunthas only. Still not satisfied, the petitioner Ilyaskhan Musakhan filed Revision Application No.TEN.B.S.111 of 1988, and Vithalbhai Nagarji Lad (Prajapati) (since deceased) through legal representatives and Ghelabhai Nagarji Lad, purchasers from Ilyaskhan Musakhan, filed Revision Application No.TEN.B.S.124 of 1988.

5. It was contended before the learned Gujarat Revenue Tribunal that in absence of proper material before the authority, the land could not be treated to be superior dry crop land or rice land, unless there was a notification by the State. It was also submitted that the land admeasuring 3 Acres and 28 Gunthas was already transferred in favour of the objector, therefore, to that extent, no order could be made.

6. The learned Revenue Tribunal, after considering the

definition of rice land as given under sec.2(d) of the Act, came to the conclusion that if the average rainfall was not less then 89 centimeters a year during the five years immediately preceding the year 1959, the land could justifiably be converted into rice land and could be treated to be so. The tribunal observed that the definition of rice land was in two parts, first one was rainfall of 89 centimeters and the second a Notification by the State that the land was good for cultivating rice. After rejecting the first contention raised by the petitioner, the tribunal held that the land admeasuring 3 Acres and 28 Gunthas could not be declared surplus. He accordingly reduced the excess area to 15 Acres and 7 Gunthas only. Being aggrieved by the said order, the holder of the land is before this Court.

7. Mr.Shelat, learned senior counsel for the petitioner, after referring to the definition of rice land and superior dry crop land, as contained in sec.2(d) and 2(c) of the Act, submitted that the Tribunal fell in error in not appreciating the definition of rice land in its true perspective. He submits that for the applicability of the first part of the definition, it is not only 89 centimeters rainfall but the further requirement is that rice is grown or

such land is used for cultivation of rice. His further submission is that the second part refers to the satisfaction of the government and declaration to be made by the Government that the land is fit for cultivation of rice, he submits that the Tribunal though rightly appreciated the second part of the definition, but fell in error in not reading the first part of the definition in full.

8. Sec.2(d) of the Act reads as under;-

Sec.2(d).”rice land” means land which is situated in a local area where the average rainfall is not less than 89 centimeters a year such average being calculated on the basis of rainfall in that area during the five years immediately preceding the year 1959 and which is used for the cultivation of rice or which, in the opinion of the State Government, is fit for the calculation of rice but does not include perennial or seasonally irrigated land used for the cultivation of rice;”

9. From the above definition of rice land, it would clearly appear that particular land can be treated to be rice land in one of the eventuality, firstly, if the land is situated in local area where the average rainfall is not less than 89 centimeters a year, such average being calculated on the

basis of the rainfall in that area during five years immediately preceding year 1959 and which is used for cultivation of rice, or secondly, the land, which, in the opinion of the State Government, is fit for cultivation of rice, but does not include perennial or seasonal irrigated land used for cultivation of rice.

10. So far as the declaration by the State Government is concerned, it is not the case of the State that such a declaration has been made by the State.

11. The first part of the definition requires the Government to show and prove that the average rainfall was not less than 89 centimeters in that area during the five years immediately preceding the year 1959 and the land was used for cultivation of rice. In the opinion of this Court, if in a given area the average rainfall is above 89 centimeters, but the rice is not grown or cultivated on the said land, then such land can not be treated to be rice land. In the present matter, the Tribunal did not read the material part of the first clause which is a condition attached to the average rainfall and did not record a complete finding that the average rainfall was 89 centimeters and rice was cultivated on the land, the finding cannot be upheld. It must be noted that both the

requirements are to be satisfied simultaneously and if one of the ingredient is missing, the land cannot be treated as rice land.

12. As the learned Tribunal did not appreciate the definition in its true spirit and by reading half of the definition reached a finding contrary to law, the conclusion reached at by the authority cannot be approved, that part of the order is bad. In the opinion of this Court, the Tribunal was obliged to consider the totality of the circumstances and was also obliged to consider whether the average rainfall was 89 centimeters per year and the land was used for cultivation of rice.

13. The order rejecting the petitioner's submission that the land could not be treated to be rice land, deserves to and is accordingly set aside. The matter is remanded to the Gujarat Revenue Tribunal for deciding the issue in accordance with law and the observations made aforesaid.

14. It is, however, made clear that the remand is only to the extent of 15 Acres and 7 Guntha which was declared as surplus. In case, the Tribunal does not agree with the submissions of the petitioner and still proceeds to hold that the land was in surplus, then no order beyond 15

Acres and 7 Gunthas would be made.

15.The petition is allowed to the aforesaid extent. No costs.

(R.S. GARG, J.)

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